The Daily Dish

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DOUGLAS HOLTZ-EAKIN | JULY 16, 2015

6.6 million Americans chose to pay the IRS tax penalty for not having health care insurance last year. The average penalty for each person was $190. An estimated 300,000 people overpaid their penalty by a total of $35 million. AAF predicted this trend over a year ago when looking at young people, for which 6 out of 7 would find it financially beneficial to pay out of pocket and the tax penalty.

Yesterday, the House easily passed an extension to pay for the Highway Trust Fund through the end of the year. Ways and Means Chairman Paul Ryan says the 312-119 vote buys time for the House and Senate "…to complete work on a long-term bill this year that increases investment to meet the nation's infrastructure needs."

New research shows that health plans offered on the Obamacare exchange have 34 percent fewer doctors available in their networks compared to plans offered outside of the exchange. According to the Washington Examiner, "…exchange networks offer 42 percent fewer oncology and heart specialists, 32 percent fewer mental health and primary care providers and 24 percent fewer hospitals…"

Eakinomics: Uber Regulation

Yesterday the Department of Labor (DOL) issued "interpretive guidance" under the Fair Labor Standards Act (FLSA) on the subject of who must be classified as an employee and who may be classified as an independent contractor. The short version of the 15-page document: business' ability to use independent contractors will be greatly truncated.

Looking at this from first principles, recall that Nobel Prize winner Ronald Coase argued that people begin to organize firms when the transaction cost of coordinating production through the market exchange, given imperfect information, is greater than within the firm. That is, the boundaries of the firm — who is an employee and who is independent and selling a service — should be driven by economic conditions. Moreover, one would expect that those economic factors will change over time and one should not be surprised if the structure of businesses change as well. That is one reason it is unwise for the government to dictate business models, but rather should monitor markets for misconduct and apply remedies when it is found.

The DOL argues "When employers improperly classify employees as independent contractors, the employees may not receive important workplace protections such as the minimum wage, overtime compensation, unemployment insurance, and workers' compensation." Notice that these issues are legacies of the New Deal-era desire to make businesses the vessel of the welfare state. Over the past 80 years, it has become clear that this thinking is an unaffordable, globally uncompetitive anachronism. The DOL guidance is comparably misguided.

Mechanically, the DOL argues for an “economic realities” test based on six factors: “(A) the extent to which the work performed is an integral part of the employer’s business; (B) the worker’s opportunity for profit or loss depending on his or her managerial skill; (C) the extent of the relative investments of the employer and the worker; (D) whether the work performed requires special skills and initiative; (E) the permanency of the relationship; and (F) the degree of control exercised or retained by the employer.”

There are no particular priorities among these factors, nor are there measures of relative importance. Businesses will be reluctant to use independent contractors when they face the possibility of litigation with an unclear standard to which they will be held.

From the Forum

The 5-5-5s of Dodd-Frank at 5: Episode 4 by Meghan Milloy, AAF Director of Financial Services Policy

The 5-5-5s of Dodd-Frank at 5: Episode 3 by Meghan Milloy, AAF Director of Financial Services Policy

Fact of the Day

The president’s proposal for “free” community college is estimated to cost $60 billion, or roughly one-fifth of all spending on the Pell Grant program over the next decade.